



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Labat-Anderson Incorporated

File: B-246071.4

Date: October 9, 1992

David T. Ralston, Esq., Leonard, Ralston, Stanton & Danks, for the protester.
Robert A. Mangrum, Esq., and Joan G. Ochs, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for Chemonics International, an interested party.
Robert Sonenthal, Esq., Agency for International Development, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Determination that offeror's proposal was no longer within the competitive range was proper where agency reasonably determined that offeror's second best and final offer was technically unacceptable; proposal that agency properly finds technically unacceptable may be excluded from the competitive range irrespective of its lower proposed price.

2. Discussions were meaningful where agency provided sufficient information to protester to afford it a fair and reasonable opportunity to identify and correct any deficiencies in its proposal. Agency was not required to reopen discussions after the submission of second best and final offers (BAFO) in order to afford the protester an opportunity to resolve remaining deficiencies or to cure deficiencies first introduced in its second BAFO.

DECISION

Labat-Anderson Incorporated protests the award of a contract to Chemonics International by the Agency for International Development (AID) under request for proposals (RFP) No. 91-003, for technical assistance services. The protester contends that its proposal was improperly excluded from the competitive range after the agency's evaluation of the offeror's second best and final offer (BAFO) and that the agency failed to conduct meaningful discussions with the firm.

We deny the protest.

BACKGROUND

The RFP, issued on May 14, 1991, by the AID Mission in Mbabane, Swaziland, contemplated the award of a cost-plus-fixed-fee contract for technical assistance services to establish and manage the Black Integrated Commercial Support Network (BICSN) program in South Africa. The RFP explained that the purpose of the BICSN project was "to increase the rate of economic empowerment of disadvantaged South Africans by developing and nurturing promising enterprises within the black business community." The RFP provided that "BICSN is aimed at promoting greater entry of black firms into the mainstream, formal economy" and that "most firms assisted will be existing operations, but the project also may work with promising black start up enterprises." The BICSN project contains several interrelated components: a promotion/public education program (to expand black enterprises' access to commercial and industrial markets through subcontracting, franchising and other business linkage mechanisms); a technical assistance facility (implementing the Technical Assistance Fund (TAF) and drawing on South African service firms and business development organizations as sources of technical assistance to targeted enterprises); and an equity fund (the Black Equity Capital Fund (BECF) designed to attract private capital to black-owned enterprises in South Africa).

The RFP set forth the following technical evaluation factors and subfactors for award: (1) institutional experience (15 points)--including small business development experience, developing world experience and venture capital experience; (2) technical approach (30 points)--including monitoring/evaluation strategy, design/approach to TAF, design approach to education/promotion, and design/approach to BECF; (3) contract personnel (50 points)--including field staff, and home office staff; and (4) quality of proposal (5 points). Cost was not assigned a numerical weight for evaluation purposes, but offerors were informed that cost proposals would be reviewed for reasonableness.

As a matter of background, Labat-Anderson filed its first protest with our Office on October 4, 1991, against AID's award to Chemonics, in which the protester challenged certain aspects of the agency's evaluation of proposals; the firm supplemented that protest with additional contentions on December 5. We sustained the protest, Labat-Anderson Incorporated, 71 Comp. Gen. 252 (1992) 92-1 CPD ¶ 193, having found that the agency's technical evaluators failed to adhere to the specific evaluation factors for award stated in the RFP and that amendment to the solicitation was required for the consideration of the awardee's proposal of

personnel in excess of the number provided in the RFP. In that decision, we recommended that the agency amend the RFP to clearly state the evaluation factors for award to be considered by the agency and to notify offerors that additional staff than that stated in the RFP may be proposed. Accordingly, we recommended that an additional round of BAFOs should be requested from the two offerors (Chemonics and Labat-Anderson) that had been included in the competitive range prior to the award determination. Our decision further recommended that if after the evaluation of the second round of BAFOs Labat-Anderson is the successful offeror, AID should terminate Chemonics' current contract and award the contract to the protester.

In response to our February 18 decision, the agency amended the RFP to affirm that the solicitation's stated evaluation factors were appropriate and would be used to evaluate the second round of BAFOs sought from the offerors and that the offerors were free to propose additional personnel. The request to Labat-Anderson for its second BAFO listed seven technical discussion questions to be addressed in the firm's second BAFO. These matters included: (1) the protester's team member's "lack of consensus and, at times, even confusion regarding the BICSN's underlying conceptual basis and overall objectives"; (2) the firm's approach to resource allocation; (3) the field team's familiarity with the project design and their roles thereunder; (4) the need for substantiation of the claim that the protester's proposed local partner in the equity fund element of the project has "extensive experience in investing in the black community"; (5) the request for the replacement of a proposed TAF key person with an individual with "more familiarity or direct experience with businesses outside the informal sector"; (6) notice that the agency would prefer a lower profile strategy for the Policy Reference Group--(referring to the RFP's requirement for a group of business representatives from disadvantaged communities in South Africa to advise project management on policy issues); and (7) the agency's concern about the protester's proposed BECF manager's lack of overseas experience. (These seven items were identical to the discussion questions posed to Labat-Anderson before it submitted its first BAFO.) The agency did not cite any deficiencies in the awardee's technical proposal in its request for that firm's second BAFO.

As they had been advised prior to the first round of BAFOs, both offerors were again informed that the firms' oral presentations (to be held a few days prior to the closing date for the receipt of written technical BAFOs) were to be an integral part of the BAFO process and would be scored as such. In response to the protester's request for clarification, the agency explained that any questions asked of the firm at its oral presentation would concern the seven

areas identified in its second BAFO request and matters concerning the technical evaluation criteria. No questions were asked of either offeror during the oral presentations.

The technical evaluation committee (TEC) (which was composed of three of the original TEC members and two new members, including a new TEC chairman, due to the unavailability of some of the original TEC members) evaluated the second BAFOs and concluded that Labat-Anderson's technical BAFO, especially in the areas of technical approach and contract personnel, "suffered from a number of deficiencies" and represented a decline in the proposal's overall technical quality. Generally, the TEC found that the protester still failed to demonstrate a full understanding of the BICSN project's objectives, that the firm's overall approach lacked cohesion and focus and that the firm failed to provide the "integrated approach to project implementation" required by the RFP. One evaluator stated that "[t]he various technical components [of Labat-Anderson's second BAFO] appeared unwieldy and numerous; too much going on without some idea of how all the various efforts would tie-in together and make a whole." Another evaluator noted that the protester's approach was too "mechanical and process-oriented . . . [which] does not bode well for project success."

The TEC found Labat-Anderson's proposal deficient for failing to explain its assistance approach regarding "existing black organizations involved with black business people" and for its apparent misunderstanding of the purposes of the BECF--(the evaluators found an inadequate explanation of "how the overall equity component would function or relate to the goals of the project"). The TEC also questioned the firm's introduction of the concept of "social responsibility" into its BECF approach and the protester's reliance on a local company as its partner in the equity fund component since that company's limited investment experience (with an emphasis in resort/safari related businesses) was found to lack an "obvious relevance" to the current project. The TEC also criticized the organizational structure of the protester's proposed team as "ill-conceived, with too many personnel reporting to the proposed Chief of Party [(COP)]."

Several deficiencies were also noted by the TEC concerning the protester's proposed contract personnel. For instance, the TEC found the team as a whole to be "unconvincing, unsure and uninspired" and two newly proposed team members were criticized for their lack of knowledge of the project and the firm's proposed approach. A newly proposed information specialist's qualifications were also questioned by the TEC. The proposed COP was felt to be over-burdened (due to a management structure wherein a significant number

of management units would report directly to the COP) and to have presented a "lackluster" performance which caused the TEC to question his ability to supply the required "vision of the project." Recent information obtained by AID also indicated that this individual failed to timely complete the requirements of a separate AID contract upon which he was working. Although not a specific RFP requirement, the agency was also concerned about the protester's proposed BECF manager's lack of overseas experience, questioning the individual's effectiveness in the "politically charged environment" in South Africa. The TEC, finding that the protester's second BAFO was technically unacceptable, stated that:

"[t]hese inherent problems with the [Labat-Anderson] proposal would require major modifications and revisions, and it is the determination of the TEC that the proposal no longer has a reasonable chance of being made acceptable for award."

Consequently, Labat-Anderson's proposal was excluded from the competitive range. This protest followed.

As an initial matter, in its April 17 protest submission, Labat-Anderson generally alleged that the awardee's proposal should be rejected because Chemonics proposed certain unnamed personnel who were not available to perform the contract. Labat-Anderson waited until June 8 to identify the individuals challenged as not available and to provide additional information to support its general protest contention. The protester's own subsequent submissions show, however, that the protester possessed this additional information, at the latest, at the time it filed its April 17 protest. Further, the protester waited until August 3 to submit an affidavit from the challenged individual proposed by Chemonics in an attempt to further develop its protest allegation. We will not consider this issue due to the protester's piecemeal presentation of information since protesters are expected to exercise due diligence in presenting their respective positions. See American President Lines Ltd., B-236834.8; B-236834.9, May 15, 1991, 91-1 CPD ¶ 470. Our Bid Protest Regulations, 4 C.F.R. Part 21 (1992), do not contemplate the unwarranted piecemeal presentation of available information or development of protest issues since such practice undermines our goal of affording parties the opportunity to present their cases with the least disruption possible to the orderly and expeditious conduct of government procurements. See Midwest Contractors, Inc.; R.E. Scherrer, Inc., B-231101; B-231101.2, Aug. 8, 1988, 88-2 CPD ¶ 118; Dynallectron Corp., 65 Comp. Gen. 92 (1985), 85-2 CPD ¶ 634.

TECHNICAL EVALUATION AND COMPETITIVE RANGE DETERMINATION

The current protest, which was initially filed on April 17, and supplemented with additional protest contentions on June 10, challenges the agency's evaluation of the protester's second BAFO and the exclusion of the firm from the competitive range.

Our examination of an agency's decision to exclude a proposal from the competitive range begins with the agency's evaluation of proposals. Advanced Sys. Technology, Inc.; Eng'g and Professional Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but will examine the record of the agency's evaluation to ensure that it was reasonable and in accord with stated evaluation criteria, and not in violation of procurement laws and regulations. Science Sys. and Applications, Inc., B-240311; B-240311.2, Nov. 9, 1990, 90-2 CPD ¶ 381; Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. The offeror has the burden of submitting adequately written proposals and proposal revisions for the agency to evaluate, Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530, and an offeror's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. United HealthServ Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43. If the agency's evaluation of proposals is reasonable, and not violative of any law or regulation, there is nothing improper in an agency's making more than one competitive range determination and in dropping a firm from further award consideration. Salazar Assocs. Int'l, Inc., B-245999.2, Apr. 29, 1992, 92-1 CPD ¶ 403; Native Am. Consultants, Inc.; ACKCO Inc., B-241531; B-241531.2, Feb. 6, 1991, 91-1 CPD ¶ 129.

As stated above, Labat-Anderson's second BAFO was considered to lack understanding of the BICSN objectives and exhibit other deficiencies in the two most important technical evaluation areas, technical approach and contract personnel. Labat-Anderson disputes the agency's concerns about the protester's proposal. The protester essentially argues that since the original TEC found that its initial technical proposal was acceptable, it was "not possible to lawfully reduce" the protester's technical score after subsequent revision and evaluation. The protester argues that its second BAFO responded to all concerns and believes it was improperly found unacceptable and outside the competitive range.

We have reviewed the proposals, evaluations, and other submissions of the parties and are unpersuaded by the protester's arguments that the agency's evaluation and

exclusion from the competitive range of Labat-Anderson's second BAFO were improper. The protester's response to the TEC's findings are nothing more than a disagreement with the agency's evaluation of its proposal in matters involving professional judgment. As discussed below, we find nothing wrong in the agency's downgrading of Labat-Anderson's second technical BAFO which introduced new deficiencies and failed to resolve previously communicated deficiencies, reasonably giving the agency much concern about the protester's true understanding of the overall project.

Although the protester argues that its personnel changes in its second BAFO resulted in an improvement to its earlier proposals, and that each of its proposed team members was prepared with a thorough understanding of the BICSN and the protester's technical approach, at least two of these new individuals (those proposed for TAF and industrial development specialist (IDS) positions) could not relate a clear understanding of these areas at the second oral presentation; the substitution of Labat-Anderson's IDS candidate, which was not requested by the agency since the initially proposed candidate was favorably received, thus reasonably caused the TEC to downgrade the protester's contract personnel score. Further, although the proposed COP was initially praised by the TEC for his credentials as stated in the protester's previous submissions, his performance at the oral presentation gave the TEC much concern because his "low key style" was considered inappropriate for the energetic networking and management effort required of the position for which he was proposed. We also find reasonable the TEC's further questioning of the COP's abilities to manage this complex and demanding project in light of recent information obtained regarding his failure to timely complete contract requirements on a separate short-term AID contract.

¹Labat-Anderson also challenges the awardee's use of TAF funds for certain information management services. In this regard, the protester argues that Chemonics's proposal must be rejected or that the RFP was defective because it did not clearly state that TAF funds could be utilized in such a manner. Our review of the RFP shows that such usage of the TAF funds (through a subcontract to a local South African company) was appropriate for the information evaluation and monitoring services to be provided, although this use of TAF funds may not have been originally contemplated by AID. Further, we cannot find that Labat-Anderson has been prejudiced in any way since its proposal appears to use TAF funds for similar guidance, monitoring and information gathering services.

As for the firm's failure to assert a proper understanding of the overall BICSN project goals and how to implement those objectives, the record shows that the TEC's concerns in this area arose as early as after its review of the protester's initial technical proposal. Our review of the protester's technical submissions and the evaluation record supports the reasonableness of the TEC's findings that the protester's project approach is very process-oriented (e.g., the proposed approach outlines the general administrative procedures to be followed by each of its distinct project components without fully explaining how these processes will fulfill the agency's overall project objectives.) Additionally, there is very limited interrelationship (as depicted in the organizational charts and narratives of the proposal) between the project's diverse components (i.e., promotion/education, TAF and BECF) components (other than, for example, the occasional mention of a referral from another component), despite the RFP's requirement for an integrated approach to project implementation. As for Labat-Anderson's organizational structure, we find the agency's concerns regarding the perceived "flat" structural approach and the proposed increase of responsibilities of the COP reasonable since the record shows that not only do a significant number of management units report directly to the COP, but so would the newly proposed information specialist (whose own qualifications for the proposed duties were questioned) as well as two management interns for whom, presumably, the COP would be required to assign and monitor the training and experience required in the RFP.

As the TEC found, the protester's second BAFO generally refers to "high potential entrepreneurs" receiving certain kinds of assistance without defining such term or discussing the provision of technical assistance to existing black enterprises, as required by the RFP, apart from that of start-up companies. Regarding its proposed BECF partner, the protester's second BAFO states that the majority of that company's investments have been to companies that provide services to game reserves owned by that company and its affiliates. Although the protester now claims that these were only examples of that company's investment experience, Labat-Anderson presented these examples as representative of the company's experience, which we find the agency reasonably determined did not support the claim that the company had extensive experience in investing in the black community, especially since the resort related investment experience did not have a strong relevance to the BICSN objectives and target group.

Although Labat-Anderson was not asked to totally reconfigure its BECF program, its second BAFO introduced a three-tier approach to the equity fund component which, we believe, the agency reasonably questioned--primarily because there was

little explanation as to how the three sections would interrelate with each other and the other project components. The agency also questioned the propriety of the protester's newly proposed "socially responsible" development capital fund as inconsistent with the RFP's overall objectives and adverse to more traditional venture capital operations. We have no reason to question the agency's findings in this regard since the protester's second BAFO does not explain the expected benefits of this newly proposed approach (which the agency viewed as possibly leading to decreased or limited potential for investments.)

Based on the agency's evaluation of the protester's second BAFO and the deficiencies cited--most of which the protester simply disagrees with, but has not shown to lack any reasonable basis--we find that it was reasonable and consistent with the RFP evaluation criteria for the agency to have concluded that the deficiencies in the second BAFO were so material that major revisions would be necessary to make the proposal acceptable. Accordingly, we find that the agency appropriately excluded Labat-Anderson's technically unacceptable second BAFO from the competitive range, irrespective of its lower proposed price.² International Marketing Servs. Enters., Inc., B-246232, Feb. 24, 1992, 92-1 CPD ¶ 222; Ebasco Constructors., Inc. et al., B-244406 et al., Oct. 16, 1991, 91-2 CPD ¶ 341.

²The protester also argues that the agency's exclusion of its second BAFO from the competitive range was improper because AID's regulations require the inclusion of a proposal in the competitive range unless it is so technically inferior that meaningful discussions are precluded, or that there is no possibility that it can be improved to the point where it becomes acceptable. AID reports, however, that this regulation only applies to competitive range determinations after initial proposals without discussions and is thus not applicable here since discussions were conducted. Given the material technical deficiencies in the protester's proposal, as discussed above, and the various attempts by the protester to cure these deficiencies, we believe the agency reasonably satisfied the requirements of this regulation.

³Labat-Anderson also contends that Chemonics's second BAFO must be rejected because its price was affected by the proposal of a performance period of less than the 5 years specified in the RFP (as a result of the 6-month delay in performance due to Labat-Anderson's previous protest). This matter was apparently resolved by AID through a cost realism analysis of Chemonics' second BAFO. In any event, since Labat-Anderson was properly excluded from the competitive range on technical unacceptability grounds, we

DISCUSSIONS

Labat-Anderson argues that AID failed to conduct meaningful discussions with the firm because it did not notify the protester "at all" that deficiencies existed in its proposal.

In order for discussions to be meaningful, agencies generally must point out weaknesses, excesses, or deficiencies in proposals, unless doing so would result in disclosure of one offeror's technical approach to another offeror or in technical leveling. Aerostat Servs. Partnership, B-244939.2, Jan. 15, 1992, 92-1 CPD ¶ 71. There is no requirement that agencies conduct all-encompassing discussions, rather agencies are only required to reasonably lead offerors into the areas of their proposals which require amplification or correction. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16.

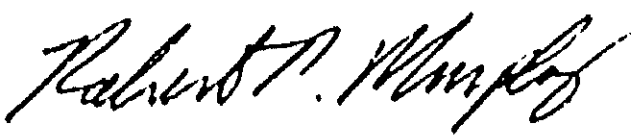
Based on our review of the record, we conclude that AID conducted appropriate and meaningful discussions with Labat-Anderson. Given the factual record before us, we find it unreasonable for the protester to assert that AID did not notify the firm "at all" of perceived deficiencies in its proposal. Despite the fact that the agency did not label its discussion questions to Labat-Anderson as "deficiencies," the record shows that AID initially identified seven technical areas to the protester with instructions for the firm to address each area in its first BAFO submission. The firm was again notified of these same technical areas as the reason for its low technical BAFO score at its debriefing immediately following the award to Chemonics. The same technical areas, especially the problems noted regarding the protester's lack of understanding of the project, were fully briefed by AID in its report in response to the firm's earlier protest contentions (a redacted copy of which was furnished to Labat-Anderson), and the same seven technical questions were raised to the protester in written discussions prior to the submission of its second BAFO. The fact that AID failed to label these technical problems as deficiencies when discussing them with the protester is inconsequential here since the repeated information conveyed to the protester reasonably put it on notice of the seriousness of the agency's concerns in these areas. A deficiency is any part of a proposal that fails to satisfy the government's requirements. Federal Acquisition Regulation § 15.601.

cannot conclude that Labat-Anderson has been prejudiced in any way.

Clearly, the agency reasonably informed the protester of the aspects of the proposal which remained defective and in need of amplification.

The record shows that each of the deficiencies which ultimately rendered Labat-Anderson's second BAFO technically unacceptable (e.g., its failure to present an adequate understanding of the BICSN project's goals and objectives and the inadequacy of its proposed local partner for the equity fund component) were either previously identified to the protester (and the firm was given an opportunity to correct those areas of its proposal) or were first introduced in the second BAFO submission (e.g., regarding its newly proposed contract personnel and BECF approach). Contrary to Labat-Anderson's contentions, AID was not required to afford the protester yet another opportunity to cure the remaining deficiencies in its second BAFO, ABB Power Co. T&D, Inc., B-246249, Feb. 6, 1992. 92-1 CPD ¶ 157, or to resolve technical deficiencies first introduced in its second BAFO, Intertec Aviation, B-239672.4, Apr. 4, 1991, 91-1 CPD ¶ 348. Under the circumstances, therefore, we find that the agency's discussions with Labat-Anderson were reasonable and meaningful.⁴

The protest is denied.


for James F. Hinchman
General Counsel

⁴We are not persuaded by Labat-Anderson's contention that it was misled by AID to believe that it had adequately addressed the agency's concerns prior to the submission of the written portion of its second BAFO since the agency did not raise any additional questions to the firm at the oral portion of its second BAFO. Although the record shows that the agency, shortly after its request for second BAFOs, informed Labat-Anderson that AID might ask technical questions of the firm at its oral presentation, we view AID's notification not as an announcement that an additional round of discussions would be held at the oral presentation, as the protester contends, but rather as AID appropriately informing the firm of the agency's possible exercise of its right to seek clarification of technical matters, if required. Moreover, AID was under no obligation to inform Labat-Anderson of any technical deficiencies remaining after its oral presentation since the protester was notified that the oral presentation was part of the firm's second BAFO. Id.